

48A C.J.S. Judges § 340

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

E. Effect of Disqualification of Judge

§ 340. Disqualification of one member of court

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

In general, the disqualification of a judge of a court composed of several members disqualifies the judge from acting in the case.

Generally, the disqualification of a judge of a court composed of several judges renders the judge incapable of participating in the case¹ but does not affect the jurisdiction of the remaining judges.² Where the statute involved absolutely prohibits a disqualified judge from sitting in the case, it has been held that if a disqualified member of a court composed of several judges participates in the hearing and determination, it invalidates the decision³ even though the judge's presence was not required to constitute a quorum⁴ and even though the ballot was such that the decision would have been the same had the judge not voted.⁵ There are cases, however, holding that the mere presence of, and participation by, a judge disqualified to act in a particular case does not necessarily invalidate the proceeding,⁶ especially if the judge's presence is not necessary to constitute a quorum⁷ or the judge's vote would not determine the result.⁸ Some cases have held that, where a disqualified member may sit with the court to make a quorum, the decision is valid if such member does not participate therein.⁹

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Footnotes

¹ Wis.—*Case v. Hoffman*, 100 Wis. 314, 74 N.W. 220 (1898).

² Alaska—*Morgan v. State*, 635 P.2d 472 (Alaska 1981).

Ill.—Williams v. Brown Mfg. Co., 45 Ill. 2d 418, 261 N.E.2d 305, 46 A.L.R.3d 226 (1970).

Motion decided by majority of remaining judges

Tex.—Ex parte Ellis, 275 S.W.3d 109 (Tex. App. Austin 2008).

3 Wis.—Case v. Hoffman, 100 Wis. 314, 74 N.W. 220 (1898).

4 N.Y.—Oakley v. Aspinwall, 3 N.Y. 547, 1850 WL 5357 (1850).

5 N.Y.—Oakley v. Aspinwall, 3 N.Y. 547, 1850 WL 5357 (1850).

6 N.D.—State v. Kositzky, 38 N.D. 616, 166 N.W. 534 (1918).

Official disqualification

Where the disqualification of one of the supreme court justices was official and not personal, the unintentional and inadvertent concurrence in the majority opinions of the supreme court by the disqualified justice did not render void the supreme court's decree.

Fla.—Caples v. Taliaferro, 146 Fla. 122, 200 So. 378 (1941).

7 N.D.—State v. Kositzky, 38 N.D. 616, 166 N.W. 534 (1918).

8 N.D.—State v. Kositzky, 38 N.D. 616, 166 N.W. 534 (1918).

9 Utah—Nephi Irr. Co. v. Jenkins, 8 Utah 452, 32 P. 699 (1893).

Wis.—Rogan v. Walker, 1 Wis. 597, 1853 WL 1739 (1853).